



POLICE DEPARTMENT

August 21, 2015

MEMORANDUM FOR: Police Commissioner

Re: Captain Johnny Orellana
Tax Registry No. 920679
47 Precinct
Disciplinary Case Nos. 2014-11356

Lieutenant Ronald Bolte
Tax Registry No. 918765
Narcotics Borough Bronx
Disciplinary Case Nos. 2014-11354 & 2014-11550

The above-named members of the Department appeared before me on May 12, May 13 and May 18, 2015, charged with the following:

Disciplinary Case No. 2014-11356

¹1. Said Captain Johnny Orellana, on or about August 28, 2012 at approximately 1248 hours, while assigned to the 44th Precinct and on duty, in the vicinity of [REDACTED], was discourteous when he stated to Sheron Moore, in sum and substance, get your fucking ass back on the sidewalk.

2. Said Captain Johnny Orellana, on or about August 28, 2012 at approximately 1248 hours, while assigned to the 44th Precinct and on duty, in the vicinity of [REDACTED] used offensive language regarding Sheron Moore's sexual orientation by calling her in sub (sic) and substance, a dyke.

3. Said Captain Johnny Orellana, on or about August 28, 2012 at approximately 1248 hours, while assigned to the 44th Precinct and on duty, in the vicinity of [REDACTED] used offensive language regarding Sheron Moore's gender by calling her, in sum and substance, a bitch.

¹ CCRB dismissed Specifications 1 and 2 on May 12, 2015.

P.G. 203-10, Page 1, Paragraph 1 - PUBLIC CONTACT - PROHIBITED
CONDUCT

Disciplinary Case No. 2014-11354

1. Said Lieutenant Ronald Bolte, on or about August 28, 2012 at approximately 1248 hours, while assigned to Bronx Borough Narcotics and on duty, in the vicinity of [REDACTED], was discourteous when he stated to Sheron Moore, in sum in substance, you fucking animal.

P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT-GENERAL

2. Said Lieutenant Ronald Bolte, on or about August 28, 2012 at approximately 1248 hours, while assigned to Bronx Borough Narcotics and on duty, in the vicinity of [REDACTED], was discourteous when he stated to Sheron Moore, in sum and substance, take your ass inside.

P.G. 203-09 - Page 1, Paragraph 2 - PUBLIC CONTACT - GENERAL

Disciplinary Case No. 2014-11550

1. Said Lieutenant Ronald Bolte, on or about October 24, 2012, at approximately 1851 hours, while assigned to Narcotics Borough Bronx and on duty, inside the Bronx Lebanon Hospital, 1650 Grand Concourse, Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department in that he unlawfully detained Derek Farrell.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED
CONDUCT

2. Said Lieutenant Ronald Bolte, on or about October 24, 2012 at approximately 1851 hours, while assigned to Narcotics Borough Bronx and on duty, inside the Bronx Lebanon Hospital, 1650 Grand Concourse, Bronx County, was discourteous in that he stated to Derek Farrell, in sum in substance, I don't give a fuck who told you.

P.G. 203-09 - Page 1, Paragraph 2 - PUBLIC CONTACT - GENERAL

3. Said Lieutenant Ronald Bolte, on or about October 24, 2012 at approximately 1851 hours, while assigned to Narcotics Borough Bronx and on duty, inside the Bronx Lebanon Hospital, 1650 Grand Concourse, Bronx County, was discourteous in that he stated to Derek Farrell, in sum in substance, No fucking body is going to tell me I can't go into the code room when one of my men is in there.

P.G. 203-09 - Page 1, Paragraph 2 - PUBLIC CONTACT - GENERAL

4. Said Lieutenant Ronald Bolte, on or about October 24, 2012 at approximately 1851 hours, while assigned to Narcotics Borough Bronx and on duty, inside the Bronx Lebanon Hospital, 1650 Grand Concourse, Bronx County, was discourteous in that he stated to Maelo Cintron, in sum in substance, Nobody tells me what to do.

P.G. 203-09 - Page 1, Paragraph 2 - PUBLIC CONTACT – GENERAL

The Civilian Complaint Review Board (CCRB) was represented by Nicole Junior, Esq., Respondent Orellana was represented by Louis LaPietra, Esq. and Respondent Bolte was represented by James Moschella, Esq.

Respondents through their counsel, entered a plea of Not Guilty to the subject charges. CCRB called Tara Pereira, Sharon Williams, and Sheron Moore as witnesses in Case Nos. 2014-11356 and 11354 and Victoria Sharak, Maelo Cintron, and Derek Farrell as witnesses in Case No. 2014-11550. Respondent Bolte called Deputy Chief Kevin Catalina, Sergeant Shawndra Smith and Lieutenant Wilbert Morales as witnesses in Case No. 2014-11550. Respondents testified on their own behalf in all three cases. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2014-11356

Respondent Orellana is found Not Guilty.

Disciplinary Case Nos. 2014-11354 & 2014-11550

Respondent Bolte is found Not Guilty of Specifications 1 and 2 of Case no. 2014-11354 and Not Guilty of Specifications 1, 2, 3, and 4 of Case No. 2014-11550.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2014-11356 and Disciplinary Case No. 2014-11354

On August 28, 2012, at about 12:45 AM, Respondent Bolte, assigned to Bronx Borough Narcotics and Respondent Orellana, assigned to the 44 precinct responded separately to the vicinity of [REDACTED]. Respondent Orellana responded to a call from an officer in need of assistance. (Tr. 271). He subsequently called Respondent Bolte to inform him that one of Bolte's officers had been hit in the head with a bottle. (Tr. 316). Both Respondents were in white uniform shirts. (Tr. 92, 94, 285, 334). There were many civilians and officers on the street (Tr. 47) and the situation was depicted by various witnesses as "chaotic." (Tr. 47, 121, 323). Respondent Bolte described a boisterous crowd on the street with cans and bottles being thrown. (Tr. 321). Sheron Moore, who lived on the street, was outside during this time. The issue in these cases concerns, what words, if any, were said by the Respondents to Moore.

Moore testified that she was outside on the street with friends and that when she went to see what officers were doing with a male they had chased, Respondent Orellana told her to, "get the fuck back on the sidewalk." (Tr. 92). She stated that she then told Respondent Orellana there was no reason for him to speak to her that way and that she had family in law enforcement. According to Moore, Respondent Orellana told her to get her "ass" on the sidewalk before, "I arrest your ass." (Tr. 93). She further testified that she then went back to [REDACTED] and saw when Respondent Bolte jumped out of his car, and said, "I'm thirsty, I'm thirsty. And he just - -he said you guys look like fucking animals, you know basically. All you guys do is cause trouble and make babies." (Tr. 93). Moore stated that Respondent Bolte ordered "everyone to go the fuck inside." (Tr. 94) Moore said she was trying to ask Respondent Bolte if she could cross the street

to where she lived when Respondent Orellana returned and said, "This is the bitch that had all the mouth from earlier. I want her arrested." (Tr. 95). Moore was placed in handcuffs and taken to the precinct. Moore testified that Respondent Orellana called her a bitch two more times in the police car. (Tr. 112-113)

Another person who testified to being on [REDACTED] that night was Tara Pereira, who was a friend of Moore. Pereira stated that she was outside talking to Moore and another friend when the only officer she saw that night in a white shirt started screaming, "You fucking animals, I'm fucking hungry." (Tr. 43, 50). Pereira then went into her building and when she looked out of her fourth floor window, she saw Moore in handcuffs but could not hear what, if anything, was being said. (Tr. 46, 49).

Moore's mother, testified she was in her apartment when she heard her daughter yell for her. She claimed that when she went outside, approached her daughter in the police car, and asked what happened, an officer told her, "This bitch is going to jail." (Tr. 65). She further testified that she walked over to another officer who stated, "All of you are nothing but a bunch of animals. You animals need to be in cages." (Tr. 67). Williams could not recall the color of the shirt of the officer who used the word, "bitch". (Tr. 70). Williams testified that she left and then returned to get into a cab to go to the Precinct. On cross-examination, Williams at first said that when she went to get into the cab, the officer only asked where she was going and said nothing else to her at that time. (Tr. 74). After being confronted with her CCRB statement, she changed this testimony to state the officer used the word "animals" both before she went inside and again when she came out to get into the cab. (Tr. 77). She could not identify the officer at trial.

A hearsay statement from Person A, another person claiming to be on [REDACTED] that night, was also admitted into evidence. In her statement to CCRB, Person A describes an officer in a blue shirt coming over to the officer in the white shirt who was handcuffing Moore, and saying, "That's the bitch right there." (Resp. Ex. A, 22-23). Person A stated that was the only profanity she heard out on the street that night. (Resp. Ex. A, 30). She also stated that an officer in a white shirt said to Moore, "oh you want to be part of these animals out here?" (Resp. Ex. A, 34).

Both Respondents testified and denied making the statements attributed to them by Moore and Pereira. (Tr. 281, 322, 327).

In order for me to find the Respondents Guilty, the CCRB has to prove the charges by a preponderance of the evidence. I find that they have not done so.

Where, as here, there are different and conflicting versions of what was said during an incident, determining the credibility of the witnesses is crucial to making a decision. In analyzing the credibility of each witness, this tribunal may consider such factors as witness demeanor, consistency of a witness' testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness' testimony comports with common sense and human experience. Moore's credibility is called into question by several factors. First, Moore has a lawsuit pending against the city based on her version of what happened the night of August 28, 2012. While the pendency of such a lawsuit certainly does not automatically mean that a witness is not credible, it does give the trier of fact reason to very carefully scrutinize the testimony given by a witness who has a financial interest in the outcome of the case. Ms. Moore's testimony does not hold up to such scrutiny.

Moore's testimony was less than forthright and the story became embellished over time as she continued to retell it. In her first report to the CCRB on September 4, 2012, Moore did not state that Respondent Orellana called her a bitch. (Tr. pp 117). In her CCRB interview on September 25, 2012, she said she was called a bitch once. In her trial testimony, she increased the use of this expletive to three times. Also in her testimony at trial, she asserted that Respondent Bolte said all they were good for was "making babies" and "causing trouble." There was no mention of these comments in the CCRB summary of Moore's initial report on September 4, 2012, nor did Moore relate these comments to CCRB in her September 25, 2012 statement to the CCRB investigator. (Tr. 129). Moore also admitted on cross-examination that she never told the CCRB during this interview that Respondent Bolte told her to "take her ass inside." (Tr. 131).

Moore's testimony also conflicted in important ways with the testimony of her friend, Pereira. Moore describes encounters with two officers in white shirts. She has her first encounter with Respondent Orellana, then an encounter with Respondent Bolte and then a second encounter with Respondent Orellana. Pereira only saw one officer in a white shirt that night. As Pereira describes standing with Moore from the time they hear something fall until the officer (which would be Bolte) screams at them and doesn't see any other white shirt, it calls into question whether Moore had an initial encounter with Orellana at all.

Another discrepancy between Moore and Pereira's testimony is what they describe Respondent Bolte as saying that evening. Moore stated that Respondent Bolte said he was "hungry" while Pereira stated that he used the word "thirsty". While such a

discrepancy in words is not necessarily dispositive by itself, it is another factor to be considered in evaluating Moore's credibility.

While Person A's interview contains statements both supporting and refuting Moore's version of events, I have not accorded it any weight as this particular hearsay statement was somewhat disjointed and could not be properly evaluated without having the benefit of the witness testify and be subject to cross-examination.

Therefore, as the CCRB has not proven the specifications by a preponderance of the evidence, I find Respondents Bolte and Orellana Not Guilty.

Disciplinary Case No. 11550- 2014

The four specifications in this case arise from an incident which took place inside Bronx Lebanon Hospital on October 24, 2012. Respondent Bolte responded to the hospital with Lieutenant Morales at approximately 6:51 PM, after learning that a member of service had been shot. Upon their arrival at the hospital, Respondent Bolte and Morales, who were both in uniform, were the ranking officers on the scene and at that time did not know the name of the officer or anything about the circumstances of the shooting. Respondent Bolte went to the area outside Code Room 1 where the officer was being treated. Hospital Security Officer Farrell and Patient Flow Administrator Sharak were outside Code Room 1. Sharak testified that approximately thirty officers entered the area outside Code Room 1 and that the doctor working on the officer told her the officers would have to wait and not enter the Code Room. Sharak said that she passed that information along to Farrell.

There are different versions of what happened next. Farrell testified that Respondent approached and tried to go into the Code Room. Farrell told him he couldn't enter and Respondent obeyed his instruction. Farrell further testified that Morales approached the Code Room and he tried first to get past Sharak to enter the Code Room and then came over by Farrell. According to Farrell he told Morales he wasn't allowed to enter and then Morales used his arm against Farrell's waist to try to push into the Code Room. Farrell says he put his arm out to the side, not touching Morales, and Morales then loudly said, "Don't hit me." (Tr. 211-214). After Morales said this, Farrell described Respondent grabbing him by his shoulder and chest area and along with several officers rushing him to a wall. He stated he was then ordered inside an x-ray room by Respondent. (Tr. 214-215). Farrell testified that Respondent next appeared in the x-ray room about 20 minutes later and while Farrell's supervisor Cintron was also present in the x-ray room, Respondent said, "I don't give a fuck. No one is going to stop me from going into the code room with one of my men in there." (Tr. 227, 235).

Sharak testified that she was standing next to Farrell and did not see him do anything before he was pushed into the x-ray room. (Tr. 163). Sharak does remember a light skinned Hispanic police officer standing in front of her and saying, "Don't touch me." (Tr. 173). She did not see Farrell or anyone touch this police officer. Sharak did not recall seeing Respondent that night. (Tr. 174).

Morales testified that he walked up to the Code Room that night and when he tried to enter, a big security guard, Farrell, grabbed his arms and told him he couldn't go in. Morales told him not to touch him. Morales proceeded to go around the guard and

when the guard grabbed him for a second time, Morales pushed him to the side, (Tr. 444-45) and entered the Code Room. Morales did not see Farrell again that night. (Tr. 461).

Respondent testified that when he arrived at the hospital someone gave him the officer's shield and that his mission was to get information about who the wounded officer was and what happened. (Tr. 472-76). Respondent got on his phone to call Operations. Respondent says he never tried to gain access to the Code Room. (Tr. 480, 482). While Respondent was on the phone, Morales does try to gain access to the Code Room and Respondent sees Farrell put his hands on Morales and push him. Respondent stated he put his phone in his pocket, and said, "Are you crazy," to Farrell. When Morales swings Farrell sideways, the crowd in the hall comes toward Respondent pinning him on the wall. Respondent testified that at that point he tried to get the crowd off him and decided the "fracas" had to be ended. (Tr. 484-85). Respondent, who was behind Farrell at this time and between Farrell and the wall, pushes Farrell across the hallway and places him in the room across the hall. (Tr. 485). Respondent further testified that about 10-15 minutes later, he went back in to the room where Farrell was and had a conversation with him and Cintron. (Tr. 490). Respondent testified that he didn't remember using any curse words but that if he did use one, "it was at the situation" and because he was coming down off a very high strung event. He stated that his purpose in speaking to the two men in the room was to instruct them that at no time as a security officer should they ever put their hands on anybody unless they are making an arrest. (Tr. 490-91).

We have the benefit in this case of having a video which captured the area outside of the Code Room from the time of Respondent's arrival until the point he moves Farrell away from the area. The video completely supports Respondent's account of what

happened outside the code room. It is apparent from the video that Respondent was indeed on his cell phone in the area of the Code Room and that he did not attempt to go inside the Code Room at any point. It is also clear that while there is a very large group of people in front of the Code Room, Respondent is pushed back against the wall and he then pushes Farrel who is in front of him to the opposite side of the hallway.

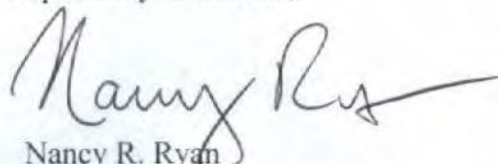
Respondent is charged under Specification I with engaging in conduct prejudicial to the good order, efficiency or discipline of the Department. I find Respondent Not Guilty of this Specification. Respondent was confronted with a situation which was in essence on the verge of turning into a melee outside of a hospital room where critical care was being given to an officer who had been shot in the chest. Respondent took immediate and very measured actions to prevent any fight from escalating and to insure that there was still complete access to the Code Room for any necessary medical personnel to enter the room. While there is conflicting testimony as to whether Farrell touched Morales before Respondent took action, I do not find it necessary to determine whether that occurred to determine the propriety of Respondent's actions. By all accounts, Morales said words to the effect of don't touch me and at that point a scuffle begins to ensue. Respondent jumped into action to curtail any further scuffle. He merely moved Farrell to another room and told him to stay there. By removing Farrell, the situation was brought back under control and treatment for the wounded officer was not put into jeopardy.

Specifications 2, 3, and 4 deal with comments that were allegedly made by Respondent in the x-ray room approximately 20 minutes after Farrell went in there. With regard to Specifications 2 and 3, since it is clear by all accounts that Respondent never

tried to force his way into the Code Room, and in fact Farrell testified that Respondent complied with his instruction not to go into the Code Room, it does not make sense that Respondent would berate Farrell about being told he couldn't enter. Farrell's testimony in general lacks some credibility in that he was not forthright on what he did with the gun recovered from the wounded officer. Farrell testified that he possessed the gun for less than a minute and gave the gun to, "the first law enforcement officers who came through the door," (Tr. 207) and yet Sergeant Smith testified that she was the officer who vouchered the gun and she received it from Farrell after he left the x-ray room. This happened about a half hour after she had been at the hospital. (Tr. 414). Farrell had the gun in his pants pocket. (Tr. 413-14). Specification 2 and 3 have not been proven by a preponderance of the evidence. Respondent is Not Guilty of these Specifications.

With regard to Specification 4, Respondent is charged with saying to another hospital security guard, Maelo Cintron, "Nobody tells me what to do." Cintron testified that while he didn't recall the exact words, Respondents said, "something like you can't tell us what the fuck to do." (Tr. 186). Assuming Respondent did say the words as charged, such a comment made immediately after a highly tense situation such as took place in the hospital when an officer is being treated for a gunshot wound, does not rise to the level of actionable misconduct. I find Respondent Not Guilty of Specification 4.

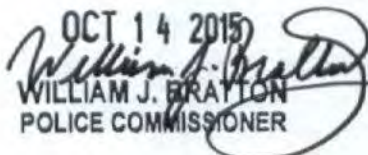
Respectfully submitted,



Nancy R. Ryan

Assistant Deputy Commissioner – Trials

APPROVED

OCT 14 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER